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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.E., a Person Coming
Under the Juvenile Court Law.

B294374
(Los Angeles County
Super. Ct. No. DK20762)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

AMBER B.,

Defendant and Appellant.

APPEAL from a juvenile court order of the Superior Court
of Los Angeles County, Emma Castro, Commissioner. Affirmed.

Judy Weissberg-Ortiz, under appointment by the
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Navid Nakhjavani,
Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals from an order terminating her parental rights over her daughter K.E. Mother argues that she demonstrated an exception to the termination of parental rights on the ground that she maintained regular visitation with K.E. and K.E. would benefit from continuing her relationship with mother (beneficial relationship exception). (Welf. & Inst. Code,¹ § 366.26, subd. (c)(1)(B)(i).)

In the juvenile court, mother did not show that her relationship with K.E. promoted K.E.’s well-being “ ‘to such a degree as to outweigh the well-being . . . [K.E.] would gain in a permanent home with new, adoptive parents.’ ” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) Further, to demonstrate the beneficial relationship exception, mother was required to show that she acted in a parental role over K.E. (*Id.* at p. 646 [“ ‘the parents must show that they occupy ‘a parental role’ in the child’s life” ’ ”].) The evidence demonstrated that mother did not act in a parental role. We affirm the order terminating mother’s parental rights over K.E.

BACKGROUND

Mother, who was born in 1990, was a dependent child under the jurisdiction of the juvenile court. She had been

¹ All statutory citations are to the Welfare and Institutions Code.

physically and sexually abused as a child. During the current proceedings, mother acknowledged having unresolved issues related to the prior sexual abuse and acknowledged that she suffered from depression. Mother has a history of suicidal ideation.

Mother admitted that she used controlled substances to cope with stress in her life. Mother used controlled substances while she was pregnant with her daughter, K.E. As a result, mother never had custody of K.E.

Father, who was born in 1993 and was a member of a gang, but reported that he left the gang in 2015. He was incarcerated during portions of the dependency period. Father did not reunify with K.E.'s half-brother, who was a dependent child in 2012 and 2013. Father had been convicted of several crimes, including willful cruelty to a child. In the current case, the juvenile court ordered no reunification services for father. Father is not a party to this appeal.

During the dependency proceedings, mother lived at least some of the time with her great grandfather. Other times she was homeless and lived in a sober living facility. Mother obtained a restraining order against father after he choked her, but mother did not want the restraining order, and she violated it.² The juvenile court found that mother had a relationship with

² An officer described the choking incident as follows: Father "grabbed her [mother] by the neck using both hands and began choking her." Mother "was gasping for air and attempting to get [father] to stop [choking] her[]by pushing him away. [Father] grabbed her even harder and pushed her up against the wall as he blamed her for 'killing his father.' [Father] then let go of [mother's] neck and grabbed her by the hair using his right hand. He then dragged her onto the ground and pulled her

father for six months after father was released from incarceration. The juvenile court further found that mother lied about her ongoing relationship with father.

1. Petition

On December 19, 2016, the Department of Children and Family Services (DCFS) filed a section 300 petition. At that time, K.E. was less than one week old.

As later sustained, the petition alleged that mother has a history of illegal drug use and recently used methamphetamine. K.E. was born with a positive toxicology screen for amphetamine. Father knew or reasonably should have known of mother's drug use during pregnancy and failed to protect K.E.

Mother pled no contest, and the juvenile court accepted mother's plea.

2. DCFS Reports

Father reported that mother had a history of using methamphetamine. Mother acknowledged that she and father used methamphetamine together. When the dependency proceedings commenced, mother agreed to enter an inpatient treatment facility. But, in March 2017, DCFS reported that mother avoided contact from social workers and refused to take drug tests. A social worker concluded that mother demonstrated "little initiative or interest" in addressing her issues, including addiction and lack of parenting skills.

outside." When he was arrested, father had a pipe commonly used for smoking methamphetamine and the pipe was coated with a white residue.

In July 2017, DCFS reported that mother relapsed and again started using controlled substances. Mother missed seven random drug tests. Eventually, mother enrolled in a residential substance abuse treatment program. While in treatment, she received parenting classes and substance abuse counseling. Mother completed the three-month inpatient substance abuse program. Throughout the three-month inpatient program, mother tested negative for controlled substances.

After the three-month program, mother enrolled in a six-month outpatient program but left the program early. Mother also stopped attending meetings. She missed four consecutive random drug tests but then tested clean from the end of November 2017 through January 2018. In January 2018, mother reenrolled in an outpatient drug treatment program.

In June 2018, DCFS reported that mother's random drug tests were negative for the last several months. At that time, mother was pregnant. The juvenile court concluded that father was the father of mother's unborn child. Mother was actively participating in a domestic violence program and regularly met with a substance abuse counselor. Mother had 11 negative drug tests. Mother subsequently completed an outpatient program that included counseling.

On June 18, 2018, the juvenile court terminated mother's reunification services. The court subsequently denied mother's petitions to change that order.

In September 2018, mother enrolled in a parenting program to increase her awareness of child development and improve her parenting skills.

3. Mother's Visitation

In December 2016, DCFS reported that mother was permitted weekly one hour visits with K.E. Mother required instructions on caring for a newborn child. Mother had limited parenting skills. Mother cancelled a visit, stating that she was out of town and did not know when she would return.

In March 2017, DCFS reported that mother enjoyed holding and feeding K.E. Nevertheless, mother required constant instructions on how to hold K.E., how to change her diaper, and how to soothe her. Mother would become agitated when K.E. cried.

In July 2017, DCFS reported that mother's visits were sporadic and inconsistent. Mother needed reminders to feed K.E. and change her diaper. Mother regularly requested rescheduling her visits.

In October 2017, DCFS reported that mother visited K.E. regularly once a week for one hour. Mother "showed improvement with her engagement with the child." Mother still needed instruction regarding changing and burping K.E.

In February 2018, DCFS reported that mother consistently visited K.E. Mother continued to visit regularly and in February 2018, DCFS reported that mother no longer required instruction on feeding K.E. or changing her diaper.

For one month, mother enjoyed unmonitored visits. When social workers learned that mother continued her relationship with father, they permitted mother only monitored visits. Mother sometimes cancelled her visits. She missed three of eight visits in February 2018, four of eight visits in March 2018, and three of nine visits in April 2018.

In October 2018, DCFS reported that mother continued to cancel visits, left three early, and attended the remaining scheduled visits. One visit was cancelled because mother gave birth to another child. During mother's visits, mother and K.E. played games and mother changed K.E.'s diaper.

4. Proposed Adoptive Parents

K.E. began living with her foster parents in February 2017. Foster parents sought to adopt K.E. and undertook a parental role throughout the proceedings. DCFS regularly reported that foster parents provided a safe home where K.E. thrived.

In October 2017, DCFS reported that K.E. continued to have positive interactions with her caregivers. DCFS reported that K.E. was "in a loving, healthy, and stable environment." Foster parents provided K.E. "a safe and protective home environment."

In February 2018, DCFS reported that K.E. was doing well in the home of her foster parents. She was attached to them. Foster parents were meeting all of K.E.'s needs. K.E. reached all developmental milestones. She appeared to be a happy child. K.E. had a consistent routine with specific nap and meal times.

K.E. would cry when separated from her foster parents. K.E. would return from visits "crying, inconsolable, and not eating."

In June 2018, DCFS reported that K.E. was thriving in the home of her foster parents. DCFS again reported that foster parents were meeting all of her needs.

In October 2018, DCFS reported that K.E. "has a secure attachment with her caregivers and seeks their attention for comfort, guidance and support." Foster parents had a "parent-to-child" relationship with K.E.

5. Juvenile Court Hearings

a. Termination of reunification services

As noted, in June 2018, the juvenile court terminated mother's reunification services. The juvenile court found that "mother has made unsatisfactory progress towards alleviating the causes necessitating placement." Father had made no progress in his case plan but continued to be "a very important person . . . in the mother's life." When asked how she would define domestic violence, mother responded " 'I don't know.' " "[T]he mother has missed 40 to 50 percent of her visits during the last period of supervision." In the visits that occurred, "mother and the child enjoy the visits." The court concluded that mother "lied to the court" about her relationship with father.

The court indicated that although mother attended classes, she had not made substantial progress. "[Y]ou go to classes. You sit in your classes. You get your certificates, but you have learned little to nothing regarding the sustained allegations on your case and regarding the reasons why your child was removed at birth."

b. Termination of mother's parental rights

On November 27, 2018, mother testified at a hearing to determine K.E.'s permanent plan. Mother testified that she regularly visited K.E., and her visits were monitored. Mother testified that K.E. referred to her as "mommy" and that she and K.E. have picnics and play together. Mother would bring chicken nuggets or homemade soup for K.E. to eat. Mother testified that she and K.E. had a "mother and daughter relationship." Mother would change K.E.'s diaper during visits but did not assume other caretaking responsibilities. Mother asked twice to attend

K.E.'s doctor appointments, but never attended any. According to mother, social workers did not respond to her requests.

6. Juvenile Court Terminated Parental Rights and Ordered Adoption as K.E.'s Permanent Plan

The juvenile court explained that mother's testimony indicated K.E. derives enjoyment from the visits with mother but "the benefit derived from [K.E.'s] visits with her parents is not sufficiently compelling to outweigh the benefits achieved by the permanency of adoption." The juvenile court emphasized that K.E. was removed from mother at birth. Mother had no established bond with K.E. at the time of her removal. K.E. spent no time in mother's custody. Mother's visits were monitored. K.E. had a strong attachment with her caretakers. "[T]here is no evidence before the court that there is an emotional bond or attachment by [K.E.] towards her mother, other than . . . the enjoyment a child receives from an adult who spends time with them and plays with them and sees them once a week." The court concluded that K.E. would not benefit from continuing the relationship with mother.

The juvenile court stated: "The mother has had regular visitation with the child[.] [H]owever, the second prong . . . requires that the child would benefit from continuing the relationship and would require . . . that the . . . relationship between [K.E.] and her mother promotes the well-being of [K.E.] to such a degree as to outweigh the well-being the child would gain in a permanent home with new adoptive [parents]. It is not enough to show that the child . . . derives some benefit from that relationship."

The juvenile court terminated both mother and father's parental rights. The court designated K.E.'s foster parents as prospective adoptive parents. Mother timely appealed.

DISCUSSION

The purpose of a section 366.26 hearing is to provide a permanent home for dependent children, and the Legislature has identified adoption as the preferred plan. (*Breanna S.* (2017) 8 Cal.App.5th at p. 645 (*Breanna S.*)) The juvenile court must order adoption unless it identifies an enumerated exception to adoption. (*Ibid.*) In this case, mother argues that the following statutory exception required the juvenile court to select legal guardianship rather than adoption as the children's permanent plan: "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) This exception applies " 'only in an extraordinary case.' " (*Breanna S.*, at p. 646.)

The juvenile court concluded that this was not a rare case in which the exception applies. Regardless of whether the standard of review of the juvenile court's order is for substantial evidence or abuse of discretion, the result is the same.³ (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166 [applying substantial evidence standard of review]; but see *In re Jasmine D.* (2000)

³ In *In re K.P.* (2012) 203 Cal.App.4th 614, the court explained that whether a beneficial parental relationship exists is reviewed for substantial evidence. In contrast, whether the relationship constitutes 'a compelling reason for determining that termination would be detrimental to the child' requires application of the abuse of discretion standard. (*Id.* at p. 622; see also *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.)

78 Cal.App.4th 1339, 1351 [applying abuse of discretion test].)
Both standards of review call for a high degree of deference.
(*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.)

**A. The Juvenile Court Correctly Relied On The Fact
That Mother Did Not Occupy A Parental Role In
K.E.’s Life**

The beneficial relationship exception upon which mother relies required her to prove that she maintained regular visitation and that her relationship with K.E. “ ‘ ‘ ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ ” ’ ”⁴ (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] No matter how loving and frequent the contact, and notwithstanding the existence of an ‘ “emotional bond” ’ with the child, ‘ “the parents must show that they occupy ‘a parental role’ in the child’s life.” ’ ” (*Ibid.*; see also *In re G.B.*, *supra*, 227 Cal.App.4th at p. 1165 [“ ‘No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life” ’ ”].) “ ‘ “Day-to-day contact is not necessarily required, although it is typical in a parent–child relationship.” ’ ” (*Ibid.*)

⁴ The juvenile court concluded that mother maintained regular visitation. As respondent points out, mother missed numerous visits and ended many others early. Nevertheless, for purposes of this appeal, we focus on the second prong, which is the basis for mother’s appeal.

“In applying this exception, the court must take into account numerous variables, including but not limited to (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the ‘ “positive” ’ or ‘ “negative” ’ effect of interaction between parent and child, and (4) the child’s unique needs.” (*In re Grace P.* (2017) 8 Cal.App.5th 605, 613.)

Mother incorrectly argues that the juvenile court relied too heavily on the requirement that mother show she occupied a parental role in K.E.’s life. The applicable law required mother to show a parental relationship. (*In re Caden C.* (2019) 34 Cal.App.5th 87; *In re K.P., supra*, 203 Cal.App.4th at p. 621.) The authority mother cites does not diminish mother’s burden to show she occupied a parental role in K.E.’s life. In *In re Casey D.* (1999) 70 Cal.App.4th 38, cited by mother, the appellate court rejected the argument that requiring a parent–child relationship would constitute an impossible hurdle and should be lowered. (*Id.* at p. 51.) *In re Brandon C.* (1999) 71 Cal.App.4th 1530 makes clear that to prove the beneficial relationship exception, courts require “more than just ‘frequent and loving contact.’” (*Id.* at p. 1534.) *In re Angel B.* (2002) 97 Cal.App.4th 454 emphasized that: “A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*Id.* at p. 466.) None of these cases supports mother’s argument that the juvenile court erred in relying on the fact that mother and K.E. did not enjoy a parent–child relationship when it ordered adoption as K.E.’s permanent plan.

Mother’s reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 also is misplaced. In that case, a father was able to continue a

significant parent–child relationship first developed while the child was in his custody. (*Id.* at p. 299.) Father “maintained a parental relationship with S.B. through consistent contact and visitation.” (*Id.* at p. 300.) In contrast here, mother never established a parent–child relationship with K.E. who never lived in mother’s custody. Additionally, mother missed numerous visits with K.E. Other than occasionally changing K.E.’s diaper and bringing food to the visits, mother never undertook caretaking responsibilities.

Moreover, subsequent to *In re S.B.*, the same court explained: “[W]e once again emphasize that *S.B.* is confined to its extraordinary facts. It does not support the proposition a parent may establish the parent–child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact. . . . [C]ontact between parent and child will always ‘confer some incidental benefit to the child,’ but that is insufficient to meet the standard. [Citation.] Moreover, given the unwarranted burden placed on this court and other courts by appellate counsel’s reliance on *S.B.* when the facts are not even arguably similar, we observe: ‘Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.’” (*In re C.F.* (2011) 193 Cal.App.4th 549, 558–559.)

In short, the juvenile correctly considered whether mother and K.E. shared a parent–child relationship.

B. Substantial Evidence Supported Termination Of Mother's Parental Rights

On appeal, mother argues that evidence showed she had a “substantial and positive attachment” with K.E. such that “terminating their familial relationship would cause the child great harm.” Beyond mother’s stated belief, there was *no* evidence in the record that severing mother and K.E.’s relationship would cause K.E. any harm. That critical fact distinguishes this case from *In re E.T.* (2018) 31 Cal.App.5th 68 in which there was “no question that the twins have a substantial and positive attachment to Mother such that terminating their familial relationship would cause them great harm.” (*Id.* at p. 77.)

Overwhelming evidence supported the juvenile court’s conclusion that K.E.’s relationship with mother was not so significant that preserving it outweighed the benefits of adoption. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396 [the “question is whether that relationship remained so significant and compelling in [the child’s] life that the benefit of preserving it outweighed the stability and benefits of adoption”]; see also *In re Collin E.* (2018) 25 Cal.App.5th 647, 664.) Only scant evidence showed that K.E. had a bond with mother, who never lived with K.E. and visited K.E. without a monitor only for one month. Moreover, mother made only limited progress during the dependency period.

In contrast, there was uncontested evidence that K.E. had a strong bond with her foster parents, with whom she had lived most of her life. K.E. thrived in the care of her foster parents. They met all of her needs. On balance, mother’s relationship with K.E. was not so significant in K.E.’s life that preserving it

outweighed the benefits of adoption. The juvenile court properly terminated mother's parental rights. (See *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 622–623.)

DISPOSITION

The juvenile court order terminating mother's parental rights is affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.